Co. (supra); *Kuehner* v. *Freeport* (supra), where the statute used the word "property;" and *Chicago* v. *Baer* (supra), where the word was "real estate." See the note to 46 L. R. A. 193. The principal case is of interest in view of the recent decisions in *Northern Pac. R. Co.* v. *City of Seattle* (1907), — Wash. —, 91 Pac. Rep. 244, where a steam railroad company was held liable on an assessment for improving a street along its right of way. For a discussion of the case and the conflict with regard to such railways, see 6 MICH. LAW REV. 153. The court distinguishes the two cases on the ground that in the former the right of way abutted on the street and was private property, while in the principal case it was no part of the street and was only an easement granted for a limited time.

PUBLIC OFFICERS—OFFICER DE FACTO—UNCONSTITUTIONAL STATUTE.—The constitution provided for the office of district judge. The legislature had the power to fix and change the districts. The legislature created a new district. The governor, thinking that the law creating the new district went into effect upon a certain date, appointed a judge who entered upon the duties. Later it was held that the law did not go into effect until several months after this judge had been appointed and had begun acting as such. At a term of court held during this interval, the petitioner was tried and convicted upon a criminal charge and sentenced to imprisonment. He applies for release upon *habeas corpus,* contending that the proceeding was a nullity. *Held,* that the judge was a *de facto* officer, whose acts as respects third persons and the public were valid, and that the writ should be denied. *State* v. *Ely* (1907), — N. Dak. —, 113 N. W. Rep. 711.

It was contended by the petitioner that, during the interval before the law took effect, there was no such office as that of judge of the new district, and that there could not be a *de facto* officer unless there was a *de jure* office. *Norton* v. *Shelby County,* 118 U. S. 425. But the court held that, as the constitution created the office of district judge, there was such an office, and that the defective legislation went only to the manner of filling it. Where there is an office the officer may be such *de facto* though he be elected or appointed in pursuance of an unconstitutional statute. *State* v. *Carroll,* 38 Conn. 449, 9 Am. Rep. 409. The question is analogous to that discussed in *Lang* v. *Mayor,* 6 MICH. LAW REV., 354, where some of the most recent cases are cited.

SALES—STANDING TIMBER.—Plaintiff by a contract in writing conveyed to Kramer "all timber lying and standing" on two certain parcels of land, with the right of egress and regress over the land for the purpose of cutting, manufacturing, and removing the material. The contract also provided that the "privilege of five years' time is hereby granted for the completion of said operation." Defendants claim as assignees of Kramer. All of the timber was severed from the soil within the agreed time and the purchase price was paid in full. Not only was the timber severed, but defendants had caused it to be manufactured into poles, ties, etc., prior to that date. Plaintiff now claims title to the same on the ground, that defendants having failed to

remove the timber from the land before the expiration of the period in which to remove, the title thereto reverted to him. *Held,* that the title to the manufactured lumber was in defendants, *Mahan* v. *Clark et al.* (1908), — Pa. —, 68 Atl. Rep. 667.

The plaintiff relied on the cases of *Boults* v. *Mitchell,* 15 Pa. St. 371; *Saltonstall* v. *Little,* 90 Pa. St. 422; and *Bennett* v. *Vinton Lumber Company,* 28 Pa. Sup. Ct. 495. The court distinguished these cases from the principal case on the ground that in those cases the timber had not been cut within the stipulated time, but had remained standing in its original state. The sale of standing timber in Pennsylvania which does not contemplate an immediate severance thereof is within the statute of frauds. *Yeakle* v. *Jacob,* 33 Pa. St. 376; *Miller* v. *Zuffall,* 113 Pa. St. 317. This rule was the foundation for the decisions in the cases spoken of above. In *Erskine* v. *Savage,* 96 Me. 57; *Golden* v. *Glock,* 57 Wis. 118; *Hicks* v. *Smith,* 77 Wis. 146; *Alexander* v. *Bauer,* 94 Minn. 174; *Macomber* v. *Railway Co.,* 108 Mich. 491; and *Johnson* v. *Truitt,* 122 Ga. 327; the courts held, under facts similar to those in the principal case, that when timber had been severed before the expiration of the period provided by the contract, the vendee had the right to go upon the land and remove it after the time had expired. This view reflects the great weight of authority. There are, however, authorities to the contrary. It was held in *Boisaubin* v. *Reed,* 2 Keyes (N. Y.) 323, that the vendee could not enter upon the land after the expiration of the term limited for the purpose of removing timber cut prior to the expiration of the term. To the same effect is *Strong* v. *Eddy,* 40 Vt. 547.

WILLS—CONSTRUCTION—PAROL EVIDENCE OF INTENTION TO DISINHERIT.—Testator died leaving a widow and two infant sons, the younger of whom was born a year and a half after the execution of the will. The will devised all of the testator's property to his wife, and contained no reference to any children, born or unborn. The Illinois statute provides that if, after making a will, a child shall be born to a testator, and no provision be made in such will for such child, the will shall not on that account be revoked, but "unless it shall appear by such will that it was the intention of the testator to disinherit such child" the other devises and legacies shall abate to raise a certain portion for such child. (HURD'S REV. ST. 1905 C. 39, § 10). The younger son by his guardian ad litem contended that no such intention to disinherit him appears by the will, and that the devise to the wife should therefore be abated according to the statute. *Held,* (CARTWRIGHT, FARMER, and DUNN, JJ., dissenting), that this section of the statute does not preclude the introduction of parol evidence by which the court could determine testator's intention to disinherit the after-born child, and that such an intention does appear. *Peet* v. *Peet et al.* (1907), — Ill. —, 82 N. E. Rep. 376.

The guardian contended that the statute precludes the court from looking to anything except the will itself to discover an intention to disinherit a child born after the execution of a will. This would seem to be the plain meaning of the statutory provision, and other courts, in cases arising under statutes very similar to this, have so held. *Bresee* v. *Stiles,* 22 Wis. 120; *Chicago,*